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10/616,956	07/11/2003	Nicole Paquette	1627P01US01	2143

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/616,956

**Applicant(s)**

PAQUETTE, NICOLE

**Examiner**

Son T. Nguyen

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-24 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/1/04.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claim 18** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "said diameter" lacks prior antecedent basis.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1-4,7-10,19-22** are rejected under 35 U.S.C. 102(b) as being anticipated by US 4181612 (herein 612).

For claim 1, 612 discloses a animal feeder support apparatus comprising a platform 10 including at least one low point; an opening (where the arrow flows through in fig. 2) located within the low point; a support 14,16 at each low point having a first end (at ref. 14) and a second end (at ref. 16), the support including a passageway between the first and second ends; and a collection container 16 located at the second end, wherein a path from the platform to the collection container via the passageway is substantially unobstructed so as to allow flow of waste feed therethrough.

For claim 2, 612 discloses wherein a base 6,20 is located at the second end.

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For claim 3, 612 discloses wherein the base includes a means 54 for accessing the collection container.

For claim 4, 612 discloses wherein the means for accessing is a door 54.

For claim 7, 612 discloses wherein the collection container includes a bottom part 28,32 that is water permeable.

For claim 8, 612 discloses wherein the bottom part of the collection container is a mesh 28 of an appropriate grade to prevent water from accumulating in the collection container and simultaneously capable of retaining the wasted material in the collection container.

For claim 9, 612 discloses wherein the collection container can be replaced or emptied.

For claim 10, 612 discloses wherein the support is a hollow support tube (see fig. 2).

For claim 19, 612 discloses wherein the platform includes a bird feeder support 12 (the grid 12 can be a bird feeder support).

For claim 20, 612 discloses wherein a cover 4 is attached to the platform.

For claim 21, 612 discloses wherein the cover is attached to the platform by multiple rigid stems 8.

For claim 22, 612 discloses wherein the cover reduces snow accumulation on the platform.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 5,6,16-18** are rejected under 35 U.S.C. 103(a) as being unpatentable over 612 (as above).

For claim 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ some sort of fixing means to anchor the base of 612 to the supporting surface, for such fixing means are notoriously well known in the art to be employed to anchor a structure to a surface.

For claim 6, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a bottomless base instead of the base having bottom 20 as taught by 612, for both types would perform the same function and that is to enclose the container.

For claim 16, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a saucer-shaped platform instead of the triangular-shaped platform of 612, for both types would perform the same function and that is to guide feed/waste towards the container below.

For claim 17, as stated in the above in claim 16, 612 lacks a saucer-shaped platform. However, again, as stated above in claim 16, it would be functional equivalent to replace one type of platform shape with another type of platform shape as long as the

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function is still applicable in the replacement. Therefore, in replace the triangular-shaped platform of 612 with a saucer-shaped platform, the saucer shaped platform inherently has a diameter due to it being circular as in a disc like.

For claim 18, based on the above claims 16-17, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the diameter of the platform of 612 be at least 2 feet, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges/value until the desired effect is achieved involves only routine skill in the art.

7. **Claims 11-15** are rejected under 35 U.S.C. 103(a) as being unpatentable over 612 (as above) in view of US 5549075 (herein 075).

For claim 11, 075 teaches a feeder support apparatus comprising a hollow support tube 17 that is telescopic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a telescopic support tube as taught by 075 in the apparatus of 612 in order to allow different height adjustment of the apparatus.

For claims 12 & 13, in addition to the above, 075's telescopic support tube is made of multiple encasing sections which allows height adjustment by expanding and retracting the sections (see figs. 4-5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a telescopic support tube as taught by 075 in the apparatus of 612 in order to allow different height adjustment of the apparatus.

For claim 14, in addition to the above, 075's telescopic support tube has retention means to maintain the sections in position (see figs. 4-5).

For claim 15, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ pegs to retain the telescopic support tube as taught by 612 as modified by 075, since such pegs are notoriously well known in the art to hold telescopic sections in position.

8. **Claim 23** is rejected under 35 U.S.C. 103(a) as being unpatentable over 612 (as above) in view of US 4384547 (herein 547). 547 teaches a decorative element (fig. 3) used in a birdcage. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a decorative element as taught by 547 in the apparatus of 612 in order to entice or amuse the animal on the apparatus.

9. **Claim 24** is rejected under 35 U.S.C. 103(a) as being unpatentable over 612 (as above) in view of US 5533466 (herein 466) and 075 (as above). Teachings of 612 and 075 are explained in the above claims, therefore, they will not be explained here. See above claims for limitation as claimed taught by 612 as modified by 075 above.

466 teaches a hanging member 134,135 for a pet habitat to support a cover 160 and to suspend the habitat. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a hanging member as taught by 466 on the apparatus of 612 as modified by 075 in order to allow the apparatus to be suspended from the ground.

***Response to Arguments***

10. Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Fri from 9:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn